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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 13.8.2007.

Mandeep Kaur ... Appellant.

vs

Sardul Singh .... Respondent.

Before : Hon'ble Mr. Justice R.S.Madan.

Present: Mr.J.S.Rattu, Advocate, for the appellant.

R.S.Madan, J.

This appeal is directed against the order dated 9.5.2007 passed in H.M.A. Case No.70 of 26.7.2006 vide which the petition under Section 12 of the Hindu Marriage Act filed by the appellant to secure a decree of nullity and to declare her marriage with the respondent as null and void, was dismissed.

Brief facts.

The appellant is a resident of Village Marnaian Khurd, Post Office Tanuli, District Hoshiarpur. She is aged about 26 years. The respondent was known to her parents. He colluded and connived with the parents of the appellant as a result of which her marriage was solemnised with the respondent on 18.1.2004 as per Sikh rites. According to the appellant, her parents on the assurance of the respondent that after reaching United States of America, he would grant divorce to the petitioner/ appellant and thereafter, he would call her parents there and solemnised her marriage with the respondent. She further submitted that earlier she did not agree to the said plan but later on agreed to marry the respondent on the

condition that he would not cohabit with her and that she would reside separately from the respondent. Thereafter, the appellant was taken to USA, where she started living with the respondent. She alleged that after some time, the respondent under the influence of liquor, started beating her and on some occasions he tried to commit sexual intercourse with her. The matter was reported to the New York Police on 3.3.2006. She made a statement before the police that her consent was obtained by threat and fraud. The appellant further submitted in the petition that she was rescued from the clutches of the respondent and thereafter upon issuance of emergency certificate by the Indian High Commission of India, she came back to India. Her parents had also subjected her to harassment forcing her to file petition in this Court seeking protection from her parents. She, thereafter, started living in a rented house. She further averred that the respondent played fraud and at the time of marriage he mentioned his age to be 30 years whereas his actual age being 48 years. This fact was came to the notice of the appellant on 3.3.2006, when the respondent tried to forcibly consummate the marriage. The appellant also averred that petition under Section 12 of the Hindu Marriage Act was not the result of collusion and prayed that her marriage with the respondent may be declared as null and void.

Upon notice, respondent Sucha Singh appeared through his counsel. But on 8.1.2007 when the case was fixed for filing written statement, none was present on his behalf and he as such, was proceeded against ex-parte.

The appellant in support of her case appeared as PW1. In her

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statement in the shape of affidavit, Ex.A1, deposed on oath all the facts mentioned in the petition. She also examined PW2 Satpal who has also tendered into evidence his statement in the shape of affidavit, Ex.P2. The appellant has also placed on record copy of order passed by this High Court on her petition filed under Section 482 Cr.P.C. seeking protection from her parents and husband, Ex.A3, and mark-X carbon copy of the petition under Section 482 Cr.P.C.

The case set up by the appellant is that her consent was secured by playing fraud on her. In fact, her parents entered into an agreement with the respondent that after marriage with the appellant, he would call them to USA. In her petition, she has admitted that her marriage was solemnised with the respondent on 18.1.2004 and the alleged connivance / fraud played by her parents and her husband came to her notice prior to the marriage which is clear from the pleadings. The appellant has also admitted in her pleadings that earlier she was not agreed to solemnise marriage with the respondent but later on she agreed with the proposal of the respondent and her parents on the condition that she would live separate from him and would not cohabit with him as his wife.

The learned Additional District Judge while dealing with the contention of the appellant that the respondent has projected himself to be 30 years old although he was around 48 years old, has rightly held that a person of 48 years of age can easily be identified from the physical features at the very first instance and it is very difficult for a person of such age to camouflage his appearance. The learned Additional District Judge has also rightly discarded the deposition of PW2 Sat Pal who in his affidavit, Ex.A2,

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could not show that under what circumstances the consent of the appellant was obtained by the respondent or her parents by playing fraud upon her. In view of these circumstances, the learned Additional District Judge, Hoshiarpur, has dismissed the petition of the appellant vide order dated 9.5.2007.

The appellant has now impugned the abovesaid judgment and decree in this appeal.

It is contended on behalf of the appellant that the learned trial court has not appreciated the evidence in its true spirit despite of the fact that there is a statement of the appellant that she got married with the respondent on the assurance given by the respondent to her parents that they would be called to the USA and on reaching there he would divorce her and would perform marriage with her. It has further come in her statement that the respondent gave her beating and forced her to live with him under one roof as husband and wife. The appellant has admitted that her marriage was solemnised with the respondent on 18.1.2004 according to Sikh rites. She has not pleaded or proved in her statement except one incident dated 3.3.2006, that when and under what circumstances, the respondent gave beatings to her and made an attempt to commit sexual intercourse with her. This part of the statement is also not corroborated from any cogent and convincing evidence.

After going through the facts of the case, it appears that that the appellant has herself consented for the marriage and performed the same with Sikh rites in India. It would not be open to the appellant now to state that her consent was obtained by playing fraud upon her. She has married

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with the respondent after giving her free consent. The part of story projected by her that the respondent has promised her that on reaching USA he would divorce her and would perform a fresh marriage, appears to be a concocted version. She has miserably failed to prove the essential ingredients as envisaged under Section 12 of the Hindu Marriage Act to secure the decree of nullity. The present appeal is nothing but an attempt made by the appellant to misuse the process of the court.

No other point was urged before this court.

There is no merit in this appeal and the same is dismissed as such.

13.8.2007. (R.S.Madan)
vs. Judge.